IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1190 of 2002

Elegant Garments,
rep.by its
Managing Partner,
Nungambakkam,
Chennai - 34. ... Appellant/Petitioner

Vs.

Regional Provident Fund Commissioner,
Employees Provident Fund,
Tamil Nadu & Pondicherry,
22-23, Royapettah High Road,
Chennai - 14. ... Respondent/Respondent

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.15116 of 1994 dated 5.3.2002.

W.P.No.15116 of 1994:-

Petition presented under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings TN/30041/SDC-4/9495/144 dated 20.5.94 and quash the same.

For Appellant : Mr.M.Ramalingam
For Respondent : Ms.K.Gunasekar, ACGSC

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is filed against the order of the learned single Judge dated 5.3.2002 made in W.P.No.15116 of 1994 dismissing the writ petition filed by the appellant challenging the order of the respondent imposing damages for the belated remittance of the provident fund contribution.

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2. The brief facts necessary for disposal of this writ appeal are that by letter dated 29.10.1984 the appellant Garment Export Firm requested the respondent to allot Provident Fund Code number so as to enable the appellant to deduct provident fund subscription from its employees, but there was no reply. On 16.12.1984 the first respondent requested the Enforcement Officer to examine the applicability of the Act to the appellant establishment and submit a coverage proposal along with necessary Government order and the copy of the said letter was marked to the appellant. The Provident Fund Inspector visited the appellant factory and all the relevant documents were furnished before the Inspector and it was submitted before him that the Act can be applied only from November, 1984. It is the further case of the appellant that in spite of the best efforts taken, the respondent failed to allot code number to the appellant establishment and after the exemption period eligible under section 16(1)(b) of the Act, the appellant deducted subscription from the employees, who were eligible to become as members under the Act and kept the money safely in the bank. The appellant have to deposit both the subscription deducted from the employees with the equal amount of contributions of the appellant for those eligible members from November, 1984. Since Code numbers for the establishment as well as to the subscribers were not allotted, the appellant could not remit the amount collected from the employees periodically, to the respondent. Since there was delay on the part of the respondent in allotting code number, appellant filed W.P.No.2428 of 1986 before this Court and pursuant to the direction issued by this Court on 29.4.1991, respondent by his proceedings dated 18.2.1992 allotted the code number TN/30041 to the appellant and immediately the appellant remitted the entire contribution of the employer and employees to the respondent.

3. Respondent, by his proceeding dated 27.12.1993 issued a notice and called upon the appellant to explain as to why damages should not be levied from 1984-85 to 1992-93 for the belated remittance of Provident Fund contributions in respect of its employees. The appellant by its authorised representative appeared before the respondent and stated their objections by letter dated 27.4.1994. The plea raised by the appellant was that there was no delay in payment of contribution and due to the delay in allotting the code number there was delay in remittance. Immediately after the allotment of the code number the appellant remitted the entire amount and in spite of the objection and explanation given by the appellant, the respondent by order dated 20.5.1994 imposed damages to the tune of Rs.2,89,984/- computed under section 14-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The said order was challenged by the appellant in the above writ petition.

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4. The respondent filed counter affidavit wherein it is stated that the appellant is duty bound to remit the provident fund contributions and even if the code number is not allotted, the appellant could have remitted the amount to the principal employer or could have remitted the amount in its own separate account. According to the respondent, when these two options were available and the same having not been utilised by the appellant, the respondent is entitled to levy damages for the unreasonable belated payment under section 14-B of the Act.

5. The learned single Judge considering the rival submissions and in the light of the statutory provisions, dismissed the writ petition, as against which this writ appeal is preferred.

6. The learned counsel for the appellant argued that due to the delay in allotment of the code number only the appellant has not remitted the Employees Provident Fund contributions and the respondent having delayed the allotment of code number, is not justified in imposing heavy damages on the appellant. The learned counsel also argued that without any basis the damage amount of Rs.2,89,984/- has been ordered to be remitted.

7. The learned counsel for the respondent submitted that even if the allotment of code number is delayed, nothing prevented the appellant from remitting the contribution with the principal employer or at least the appellant could have paid the amount in its own separate account and under section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the respondent is entitled to claim damages for the belated payment. According to the learned counsel, the amount was arrived at based on the guidelines issued in clause 32-A of the Employees Provident Fund Scheme, 1952. The learned counsel also submitted that similar issue was considered by the Honourable Supreme Court in the decision reported in (1997) 1 SCC 241 (Regional Provident Fund Commissioner v. S.D.College, Hoshiarpur and Others).

8. We have considered the rival submissions of the learned counsel appearing for the appellant as well as the respondent.

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9. For proper appreciation, clause 32-A is extracted hereunder,

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"32-A. Recovery of damages for default in payment of any contribution:- (1) Where an employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 of the Act or in the payment of any charges payable under any other provision of the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below:-

	Period of default	Rate of damages (percentage of arrears per annum)
(a)	Less than two months	Seventeen
(b)	Two months and above but less four months	Twenty-two
(c)	Four months and above but less than six months	Twenty seven
(d)	Six months and above	Thirty seven

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored."

10. In the decision reported in (1997) 1 SCC 241 (Regional Provident Fund Commissioner v. S.D.College, Hoshiarpur and Others) in para 10 the Honourable Supreme Court considered the scope of section 14-B, which reads as follows,

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"10. A reading of Section 14-B of the Act would indicate that the employer is under an obligation under the statute to comply with the payment of the amount. In the event of his committing default in the payment of the contribution to the fund or in the payment of any charges payable under any other provisions of the Act or any scheme or insurance scheme or any of the conditions specified in Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government may, by notification in the Official Gazette in this behalf, recover from the employer, by way of penalty, such damages, not exceeding the amount of arrears, as may be specified in the scheme. The second proviso only lifts the embargo in the event of the industry becoming sick and it was reconstructed under the provisions of Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 subject to such terms and conditions as may be specified in the scheme of rehabilitation. In other words, the Act envisages the imposition of damages for delayed payments. The Act is a beneficial welfare legislation to ensure health and other benefits to the employees. The employer under the Act is under a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and matching contribution, the entire amount is required to be deposited in the fund within 15 days after the date of the collection, every month."

11. The delay in allotment of code number will not be a ground for non-remittance as other alternate mode of payments are available, particularly the appellant could have remitted the provident fund contribution amount in a separate account. The respondent herein has taken a decision on the facts of the case and imposed damages to be paid by the appellant. Since all the facts pleaded by the appellant were considered by the respondent and decision was taken in terms of section 14-B and Clause 32-A of the Scheme, the said decision cannot be treated as perverse finding, warranting interference under Article 226 of Constitution of India. The learned single Judge rightly upheld the order of the respondent and dismissed the writ petition.

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12. Having regard to the judgment of the Honourable Supreme Court cited supra and as we do not find any illegality in the order of the respondent dated 20.5.1994 as well as in the order of the learned single Judge dated 5.3.2002, we dismiss the writ appeal. No costs.

13. The learned counsel for the appellant submitted that during the pendency of the proceedings, appellant remitted Rs.1,00,000/-. Therefore, the appellant is directed to pay the remaining amount of Rs.1,89,984/- within a period of two months from the date of receipt of copy of this order.

vr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Regional Provident Fund Commissioner,
Employees Provident Fund,
Tamil Nadu & Pondicherry,
22-23, Royapettah High Road,
Chennai - 14.

+ 1 cc to Mr. M. Ramalingam, Advocate, SR No.4421

+ 1 cc to Mr. K. Gunasekar, ACGSC, Advocate, SR No.4428

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